

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

March 22, 1991



ALL COUNTY LETTER NO. 91-25

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY COUNSELS
ALL COUNTY PROBATION OFFICERS
ALL JUVENILE COURT JUDGES

SUBJECT: ASSEMBLY BILL 1528 (CHAPTER 182, STATUTES OF 1990)

The purpose of this All County Letter (ACL) is to inform counties of the provisions of Assembly Bill (AB) 1528 (Chapter 182, Statutes of 1990), which became effective January 1, 1991.

Assembly Bill 1528, which was sponsored by the California State Department of Education, Commission on Special Education, amended Sections 56028, 56050, 56156, and 56200 of the Education Code; added Section 7579.5 to the Government Code; and amended Sections 245.5 and 361 of the Welfare and Institutions Code regarding the appointment of surrogate parents for dependents or wards of the court who require specified special education.

Most of these amendments address the responsibilities of the Local Educational Agency (LEA), in the provision of special education for children with identified exceptional educational needs who are dependents or wards of the court. The amendments identify the LEA (e.g. district, county office of education, Special Education Local Plan Area (SELPA)) as the agency responsible for appointing surrogate parents under prescribed conditions; make the definition of "parent" consistent in State and federal law; identify the activities in which the surrogate parent has a role; define the responsibilities of those involved in the provision of special education; and describe the required information to be provided in each local plan and multidistrict plan.

While the amendments described above basically pertain to the responsibilities of the State Department of Education, SELPAs and LEAs, two of the amendments in AB 1528 directly affect county welfare and probation department activities and responsibilities.

One of these amendments is the requirement that the individual appointed to act as a surrogate parent for a child with identified exceptional educational needs may not be an employee of a public agency which is involved in the education or care of the child (Section 7579.5(f) of the Government Code). This precludes social workers and probation officers from acting in the capacity of a surrogate parent.

This is a change from the information provided counties by the State Department of Social Services via ACL 86-48 (June 6, 1986). Page three, paragraph one of ACL 86-48 states:

"When an IEP team meeting is conducted for a court dependent, absent any specific court order to the contrary, the agency which has been assigned care, custody and control by the court is responsible for functioning as the child's legally responsible agent for educational purposes. This responsibility includes consenting in writing to assessments and the content of the IEP. The IEP cannot be implemented without the CWD's consent. This responsibility cannot be delegated. (However, when reunification is anticipated, the child's parents should also be encouraged to participate in the IEP process.)"

These instructions, which were based on existing juvenile court dependency statute, provided for county staff, including social workers and probation officers, to actively participate in the planning, development and authorization of "individualized education programs" (IEPs) for children with identified exceptional educational needs, when the child had no parent/guardian, or when the parent's rights to make decisions regarding the child's education had been removed.

Enactment of AB 1528 brings California into compliance with federal law (Title 34, CFR 300.514(d)) which requires that a person appointed as a surrogate parent may not be an employee of a public agency which is involved in the education or care of the child. (This law, as interpreted by the Federal Government, specifically precludes social workers and probation officers from acting as the child's educational representative.)

Additionally, the amendment to Section 361 of the Welfare and Institutions Code enacted as a result of AB 1528 requires the juvenile court to specifically address any limitation of the right of the parent or guardian of a child with identified exceptional educational needs to make educational decisions for the child. AB 1528 authorizes the juvenile court to specifically address education in its orders about care, supervision, custody, conduct, maintenance, support and medical treatment.

While the new law precludes certain employees of public agencies from acting as surrogate parents, those employees should continue to provide information to the juvenile court which would be useful to help the court address the rights of the parents to make educational decisions for the child. Counties should also continue to provide information to local education agencies, county offices of education and SELPAs as necessary to ensure appropriate educational services for wards and dependents of the court.

In summary, as a result of the enactment of AB 1528, certain public employees (i.e., social workers, probations officers) will no longer be responsible for or permitted to perform the activities of surrogate parent regarding education issues. These activities will be performed by educationally appointed surrogate parents or by the child's parent(s)/guardian(s) who retains authority to make educational decisions for his/her child. Additionally, the juvenile court is now responsible for specifically addressing the rights of parents/guardians with regard to educational issues for children with identified exceptional educational needs.

Implementation of the new law is being coordinated by the State Department of Education. A series of workshops addressing the key aspects of AB 1528 is planned for the first half of 1991. The State Department of Education will invite staff from local education agencies, county welfare departments, county probation offices, county departments of mental health, representatives from the local juvenile justice system and group home providers to attend the workshops.

If you have any questions regarding the information provided in this ACL, contact your Child Welfare Services Operations consultant at (916) 445-0623.



LOREN D. SUTER
Deputy Director

cc: County Welfare Directors Association